

# **Government of the District of Columbia**

## **ZONING COMMISSION**



### **ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA NOTICE OF FINAL RULEMAKING**

**and**

**ORDER NO. 929-C**

**Z.C. Case No. 00-28TA**

**(Text Amendment -- 11 DCMR)**

**(Electronic Equipment Facilities)**

**September 17, 2001**

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code, 2001 Ed. §§ 6-641.01 and 6-641.07(d) (formerly codified at D.C. Code §§ 5-413 and 5-424(d) (1994 Repl.))), and having held a public hearing as required by § 3 of the Act (D.C. Code, 2001 Ed. § 6-641.03 (formerly codified at D.C. Code § 5-415 (1994 Repl. & 1999 Supp.))), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1, hereby gives notice of the adoption of amendments to Chapters 1, 6, 7, 8, 21, 22, 24, 31, and 32 of the Zoning Regulations, Title 11, DCMR.

The proposed amendments regulate the placement of Electronic Equipment Facilities (EEFs) in the District of Columbia, providing the use as a matter-of-right, a special exception, or planned unit development (PUD), depending on location and circumstances. The Commission undertook this action in response to a recommendation from the Office of Planning (OP), who had legitimate concerns regarding the potential adverse impact that EEFs have on the communities in which they are located.

A meeting at which the Commission voted to take proposed action with respect to these rules was held on June 21, 2001. The proposed rules were published in the *D.C. Register* on July 21, 2001 (48 DCR 6455). A meeting at which the Commission voted to take final action with respect to these rules was held on September 17, 2001. A number of non-substantive changes were made to the proposed rulemaking. These final rules will be effective upon publication of this notice in the *D.C. Register*.

An initial published emergency rulemaking regarding EEFs, published on December 8, 2000 (47 DCR 9775), represented a compilation of two rules adopted at regular meetings of the Zoning Commission on October 16, 2000 and November 17, 2000. Each rule became effective on its date of adoption. Because the two rules were related, they were published together in a single emergency rulemaking.

Prior to promulgation of the emergency rulemaking, the Zoning Commission had not previously determined where, and under what conditions, EEFs may be located. In the absence of a Zoning Regulation providing for this new use, there was no means to control the development of these facilities or assess the adverse impact they may have on an area identified for redevelopment.

Under the provisions of the emergency legislation, special exception review of EEFs was undertaken by the Commission. This was intended as a temporary measure only, due to a heavy caseload at the Board of Zoning Adjustment (BZA). Therefore, in the final version of these rules, the BZA, which traditionally hears applications for special exceptions, is to review all special exception applications for EEFs.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to 11 DCMR.

Title 11 is amended as follows:

- A. Amend Chapter 1, The Zoning Regulations, § 199, DEFINITIONS, § 199.1, to add “Electronic Equipment Facility (EEF)” and “Ground Floor” to the list of definitions:

**Electronic Equipment Facility (EEF)** – regardless of the name given, a facility or space used primarily for, or intended to be used primarily for, the housing, operation, and/or co-location of computer equipment that provides: (a) electronic data switching; (b) transmission; and/or (c) telecommunication functions, whether inside or outside the facility. The term Electronic Equipment Facility includes, but is not limited to, Data Center, Server Farm, Co-Location Facility, Telecommunications Switching Center, Tech Hotel, Telco Hotel, and Telecommunications Central Office.

Except for purposes of this title, the term EEF shall not include facilities occupying less than one thousand five hundred square feet (1,500 sq. ft.) of building area that are utilized as remote terminal units or Optical Transition Nodes as necessary for the operation of cable television systems.

Ancillary uses may include an office for equipment personnel, back-up power generators, and fuel storage, but may not include company offices, retail uses, or customer service operations.

**Ground Floor** – the floor that is nearest in grade elevation to the adjacent surface of the public right of way.

- B. Amend Chapter 6, MIXED USE DISTRICTS (CR), § 601, USES AS A MATTER OF RIGHT (CR), § 601.1, by deleting the “and” in paragraph (r), inserting a semi-colon and the word “and” at the end of paragraph (s), and adding a new paragraph (t), to read as follows:

601.1 ....

- (t) Electronic Equipment Facility (EEF) use under either or both of the following circumstances:
  - (1) The EEF use occupies no more than twenty-five percent (25%) of the above ground constructed gross floor area of the building, provided that no EEF use is located on the ground floor; or
  - (2) The EEF use is located below ground floor.

- C. Amend Chapter 7, COMMERCIAL DISTRICTS, as follows:

1. By amending § 741, USES AS A MATTER OF RIGHT (C-3), to add a new § 741.8 to read as follows:

741.8 Electronic Equipment Facility (EEF) use under either or both of the following circumstances:

- (a) The EEF use occupies no more than twenty-five percent (25%) of the above ground constructed gross floor area of the building; or
- (b) The EEF use is located below ground floor.

2. By adding a new § 745 to read as follows:

**745 ELECTRONIC EQUIPMENT FACILITIES (C-3)**

745.1 An Electronic Equipment Facility (EEF) that does not qualify as a matter-of-right use under § 741.8 may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.

745.2 An EEF shall not occupy more than fifty percent (50%) of the constructed gross floor area of the building, unless approved as part of a planned unit development pursuant to chapter 24 of this title.

- 745.3 An applicant seeking a special exception for an EEF shall demonstrate, in addition to the requirements of § 3104, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, inhibit future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.
- 745.4 In evaluating whether an EEF will have any of the adverse impacts described in § 745.3, the Board shall consider, in addition to other relevant factors:
- (a) Absence of retail uses or of a design capable of accommodating retail uses in the future;
  - (b) Presence of security or other elements in the design that could impair street life and pedestrian flow;
  - (c) Disruption of existing or elimination of officially proposed pedestrian or vehicular routes; and
  - (d) Inability of the EEF to be adapted in the future for permitted uses.
- 745.5 The Board, in weighing the potentially adverse factors listed in § 745.4 (a) through (d), shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metrorail station or along a pedestrian corridor.
- 745.6 The Board may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased business activity within the neighborhood, if that activity will foster economic development.
- 745.7 The Board may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve an active, safe, and vibrant street life.

3. By adding a new § 756 to read as follows:

**756 ELECTRONIC EQUIPMENT FACILITIES (C-4)**

- 756.1 An Electronic Equipment Facility (EEF) that does not qualify as a matter-of-right use under § 751 may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.
- 756.2 An EEF shall not occupy more than fifty percent (50%) of the constructed gross floor area of the building, unless approved as part of a planned unit development pursuant to chapter 24 of this title.
- 756.3 An applicant seeking a special exception for an EEF shall demonstrate, in addition to the requirements of § 3104, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, preclude future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.
- 756.4 In evaluating whether an EEF will have any of the adverse impacts described in § 756.3, the Board shall consider, in addition to other relevant factors:
- (a) Absence of retail uses or of a design capable of accommodating retail uses in the future;
  - (b) Presence of security or other elements in the design that could impair street life and pedestrian flow;
  - (c) Disruption of existing or elimination of officially proposed pedestrian or vehicular routes; and
  - (d) Inability of the EEF to be adapted in the future for permitted uses.
- 756.5 The Board, in weighing the potentially adverse factors listed in § 756.4 (a) through (d), shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or along a proposed Metrorail station or a pedestrian corridor.

- 756.6           The Board may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased business activity within the neighborhood, if that activity will foster economic development.
- 756.7           The Board may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve active, safe, and vibrant street life.

D.     Amend Chapter 8, INDUSTRIAL DISTRICTS, as follows:

1.     By amending § 801, USES AS A MATTER OF RIGHT (C-M), § 801.7, by deleting the word “and” in paragraph (j), inserting a semi-colon and the word “and” at the end of paragraph (k), and adding a new paragraph (l) to read as follows:

801.7

- (l)     An Electronic Equipment Facility (EEF), provided an EEF exceeding twenty-five percent (25%) of the gross floor area of a building shall not be located within eight hundred feet (800 ft.) of an established or planned Metrorail station or within one thousand two hundred and fifty feet (1250 ft.) of the edge of a river as measured at mean high tide.

2.     By amending § 802, SPECIAL EXCEPTIONS (C-M), to add new §§ 802.10 through 802.16 to read as follows:

802.10           An Electronic Equipment Facility (EEF) that does not qualify as a matter-of-right use under § 801.7(L) may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of §§ 802.11 through 802.16.

802.11           An EEF shall be subject to the Standards of External Effects in § 804.

802.12           An applicant seeking a special exception for an EEF shall demonstrate, in addition to the requirements of § 3104, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, preclude future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.

802.13 In evaluating whether an EEF will have any of the adverse impacts described in § 802.12, the Board shall consider, in addition to other relevant factors:

- (a) Absence of retail uses or of a design capable of accommodating retail uses in the future;
- (b) Presence of security or other elements in the design that could impair street life and pedestrian flow;
- (c) Disruption of existing or elimination of officially proposed pedestrian or vehicular routes; and
- (d) Inability of the EEF to be adapted in the future for permitted uses.

802.14 The Board, in weighing the potentially adverse factors listed in § 802.13 (a) through (d), shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metrorail station or on a pedestrian corridor.

802.15 The Board may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased business activity within the neighborhood, if that activity will foster economic development.

802.16 The Board may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve active, safe, and vibrant street life.

3. By amending § 804, STANDARDS OF EXTERNAL EFFECTS (C-M), to add a new § 804.14 to read as follows:

804.14 Where an Electronic Equipment Facility (EEF) use is proposed in a C-M District on a lot that abuts a Residence (R), Special Purpose (SP), Waterfront (W), or Mixed Use (CR) zoned property, the following conditions shall apply:

- (a) Use of barbed or razor wire that is visible from neighboring property or public space is prohibited; and
- (b) Any back-up generators or power systems shall be either:

- (1) Fully enclosed within the principal structure; or
  - (2) Located no closer than two hundred feet (200 ft.) from the nearest R, SP, W, or CR zoned property line.
4. By amending § 805, EXTERNAL EFFECTS PERMIT APPLICATIONS (C-M), § 805.1, paragraph (a), to read as follows:  
  
805.1 . . . .  
  - (a) A site plan showing buildings and other structures, roadways, drainage and sanitary facilities, parking spaces, loading berths, landscaping, exterior lighting, and back-up generators or power supplies (if any); and
5. By amending § 822, SPECIAL EXCEPTIONS (M), to add new §§ 822.9 through 822.14 to read as follows:  
  
822.9 An Electronic Equipment Facility (EEF) that does not qualify as a matter-of-right use under § 801 may be permitted as a special exception.  
  
822.10 An applicant seeking a special exception for an EEF shall demonstrate, in addition to the requirements of § 3104, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, preclude future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.  
  
822.11 In evaluating whether an EEF will have any of the adverse impacts described in § 822.10, the Board shall consider, in addition to other relevant factors:
  - (a) Absence of retail uses or of a design capable of accommodating retail uses in the future;
  - (b) Presence of security or other elements in the design that could impair street life and pedestrian flow;
  - (c) Disruption of existing or elimination of officially proposed pedestrian or vehicular routes; and



- (d) Inability of the EEF to be adapted in the future for permitted uses.

822.12 The Board, in weighing the potentially adverse factors listed in § 822.11 (a) through (d), shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metrorail station or on a pedestrian corridor.

822.13 The Board may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased business activity within the neighborhood, if that activity will foster economic development.

822.14 In approving an EEF, the Board may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve active, safe, and vibrant street life.

- 6. By amending subsection 825.1 in § 825, STANDARDS OF EXTERNAL EFFECTS (M), as follows:

825.1 All uses established in a C-M District under authority of §§ 801.7 or 821.3, all Electronic Equipment Facility (EEF) uses established in an M district, and all uses accessory to those uses shall be operated to comply with the standards of external effects in this section.

- 7. By adding a new § 825.13 to read as follows:

825.13 Where an Electronic Equipment Facility (EEF) use is proposed in an M District on a lot that abuts a Residence (R), Special Purpose (SP), Waterfront (W), or Mixed Use (CR) zoned property, the following conditions shall apply:

- (a) Use of barbed or razor wire that is visible from neighboring property or public space is prohibited; and
- (b) Any back-up generators or power systems shall be either:
  - (1) Fully enclosed within the principal structure; or

- (2) Located no closer than two hundred feet (200 ft.) from the nearest R, SP, W, or CR zoned property line.

8. By amending § 826, EXTERNAL EFFECTS PERMIT APPLICATIONS (M), first paragraph of § 826.1, to read as follows:

826.1 When filing an application for a building permit or a certificate of occupancy with the Department of Consumer and Regulatory Affairs for a hotel or inn permitted in an M District under § 821.2 or for a use permitted under § 821.3, the applicant shall submit with the application three (3) copies of a site plan that shows buildings and other structures, roadways, drainage and sanitary facilities, parking spaces, loading berths, landscaping, exterior lighting (if any), and back-up generators or power supplies (if any), and a description of any operations that would be affected by the standards of external effects in § 825.

- E. Amend Chapter 21, OFF-STREET PARKING REQUIREMENTS, by amending the Schedule of Requirements for Parking Spaces in § 2101.1 to add the following parking standards for Electronic Equipment Facilities:

USES

NUMBER OF PARKING  
SPACES REQUIRED

Electronic Equipment Facility (EEF):

Parking requirements for EEFs apply only to new construction. Up to 50% of the number of parking spaces specified in this table may be set aside as a parking reserve and used for non-habitable uses related to the EEF use. If EEF use is discontinued, the parking reserve shall be developed for required parking. EEF use in existing structures is subject to the parking requirement applicable to the last known use.

C-3, CR

In excess of 2000 ft.<sup>2</sup>, 1 for each additional 1,800 ft.<sup>2</sup> of gross floor area

C-4, C-5

Same as required for general office use

C-M, M

1 for each 3,000 ft.<sup>2</sup> of gross floor area

- F. Amend Chapter 22, OFF-STREET LOADING REQUIREMENTS, by amending the Schedule of Requirements for Loading Berths, Loading Platforms, and Service/Delivery Loading Spaces in § 2201.1 to add the following standards for Electronic Equipment Facilities:

<u>Uses and Districts</u>	<u>Minimum Number and Size of Loading Berths Required</u>	<u>Minimum Number and Size of Loading Platforms</u>	<u>Minimum Number and Size of Service/Delivery Loading Spaces Required</u>
Electronic Equipment Facility (EEF) in C-3, C-4, C-5, CR, C-M, and M Districts:			
With 20,000 to 50,000 ft. <sup>2</sup> of gross floor area	1 @ 30 feet deep	1 @ 100 ft. <sup>2</sup>	1 @ 20 feet deep
With more than 50,000 to 200,000 ft. <sup>2</sup> of gross floor area	2 @ 30 feet deep	2 @ 100 ft. <sup>2</sup>	1 @ 20 feet deep
With more than 200,000 ft. <sup>2</sup> of gross floor area	3 @ 30 feet deep	3 @ 100 ft. <sup>2</sup>	1 @ 20 feet deep

- G. Amend Chapter 24, PLANNED UNIT DEVELOPMENT REVIEW PROCEDURES, to add a new § 2400.8 to read as follows:

- 2400.8 An Electronic Equipment Facility (EEF) may occupy more than fifty percent (50%) of the gross floor area of a building in a C-3 and C-4 District if approved as part of a PUD in accordance with the requirements of this chapter and subject to the following additional criteria:
- (a) The aggregate total area to be devoted to EEF use may not exceed fifty percent (50%) of the permitted gross floor area of the entire project; and
  - (b) The EEF shall be located on a portion of the lot that does not directly front on a street so as to preclude retail, service, and office uses from being developed on the street frontage of the project.

- H. Amend the table in § 3104.1, SPECIAL EXCEPTIONS, by adding the following to the list of special exceptions:

<u>Type of Special Exception</u>	<u>District</u>	<u>Sections in Which the Conditions Are Specified</u>
Electronic Equipment Facility (EEF)	C-3, C-4, C-M, or M District	§§ 745, 756, 802.10 through 802.16, and 822.9 through 822.14

- I. Amend § 3130, TIME LIMITS ON BOARD ACTION, by adding a new § 3130.1 to read as follows:

3130.1 No order authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

Existing §§ 3130.1 through 3130.4 are renumbered 3130.2 through 3130.5

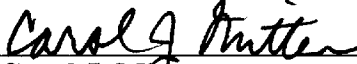
- J. Chapter 32, ADMINISTRATION AND ENFORCEMENT, § 3203, CERTIFICATES OF OCCUPANCY, is amended by adding a new § 3203.12, to read as follows:

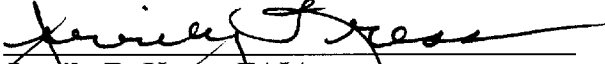
3203.12 An Electronic Equipment Facility (EEF) that occupied at least fifty percent (50%) of the gross floor area of the space owned or leased within a building by the EEF for EEF use on October 16, 2000, pursuant to a valid certificate of occupancy, but for which a building permit or certificate of occupancy has not yet been issued for the entire owned or leased space, shall be permitted to complete construction and occupancy within the entire owned or leased space as a matter-of-right, provided that the use is registered with the Zoning Administrator within ninety (90) days after the effective date of this section.

Vote of the Zoning Commission taken at its public meeting on June 21, 2001, to **APPROVE** the proposed rulemaking: **3-0-2** (John G. Parsons, Anthony J. Hood and Carol J. Mitten to approve; Herbert M Franklin present, not voting; Kwasi Holman not present, not voting).

This order and final rulemaking was **ADOPTED** by the Zoning Commission at its public meeting on September 17, 2001, by a vote of **5-0-0** (John G. Parsons, Anthony J. Hood, Carol J. Mitten, and James H. Hannaham (having read the record) to **ADOPT**; Herbert M Franklin, by absentee vote, to **ADOPT**).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*, that is, on . \_\_\_\_\_

  
Carol J. Mitten  
Chairman  
Zoning Commission

  
Jerry R. Kress, FAIA  
Director  
Office of Zoning